No. 84-33

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ALEXANDER L. STEVAS,

In The
Supreme Court Of The United States

OCTOBER TERM, 1983

RONALD MANNING, Commissioner of the Department of Human Resources of the State of Connecticut,
Petitioner

v.

ELINOR NELSON, DONALD SPELLS, DENNIS EATON, PHILLIP CORSO, individually and on behalf of those similarly situated,
Respondents

ON WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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Questions Presented

1. Whether the Court of Appeals properly concluded that earned income credits are not includable in the amount of refunds against which delinquent support payments could be offset under the income tax intercept program.

2. Whether the Court of Appeals properly determined that the Eleventh Amendment is not a barrier to an order directing the Internal Revenue Service to return earned income credits improperly withheld from taxpayers.

Reasons For Denying The Writ

I. There Are No Special Circumstances Requiring The Court's Review of This Action

The present case does not involve a matter in which the courts of appeals are in conflict. Nor does this case require Supreme Court review or involve a court of appeals decision which is contrary to this Court's prior rulings. Instead, the Court of Appeals for the Second Circuit has decided a matter of federal statutory construction consistent with the underlying legislative purposes and language as in more fully explained below. Furthermore, neither the Secretary of Treasury nor the Secretary of Health and Human Services has chosen to petition this Court for review. As such, petitioner has failed to demonstrate any

special circumstances requiring this Court's review of the case.

II. The Court of Appeals properly concluded that earned income credits are not includable in the amount of refunds against which delinquent support payments could be offset under the income tax intercept program

The income tax refund intercept procedure at issue in this case was established by §2331 of the Omnibus Budget Reconcilliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357 (1981)(hereinafter "OBRA"), which amended both the Social Security Act and the Internal Revenue Code. In determining whether the earned income credit is subject to the intercept procedures, initial inquiry must be directed to the text of OBRA itself. The relevant provisions added by "OBRA" are §464(a) of the Social Security Act, 42 U.S.C. §664(a), which provides:

> Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which has been assigned to such State pursuant to §402(a)(26), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable he shall withhold from such refunds an amount equal to the past due support, and pay such amount to the State agency (together with notice of the individual's home address) for distribution in accordance with §457(b)(3).

(Emphasis added). Furthermore, 26 U.S.C. 6402(c), of the Internal Revenue Code was added to provide:

> The amount of any overpayment to be refunded to the person making the overpayment shall be reduced by the amount of any past-due support (as defined in §464(c) of the Social Security Act) owed by that person of which the Secretary has been notified by a State in accordance with §464 of the Social Security Act. The Secretary shall remit the amount by which the overpayment is so reduced to the State to which such support has been assigned and notify the person making the overpayment that so much of the overpayment as was

> necessary to satisfy his obligation for past-due support has been paid to the State. This subsection shall be applied to an overpayment prior to its being credited to a person's future liability for an internal revenue tax.

(Emphasis added).

As the underlined portions make clear, the offset in 26 U.S.C. §6402(c) only applies to those funds discussed in 42 U.S.C. §664(a) which concern "refunds of federal taxes paid." Given the underlying statutory scheme, it is apparent that earned income credits are not subject to the intercept procedures.

Although distributed through the tax refund process, earned income credit benefits are not refunds of Federal taxes paid. One need not have paid any tax, or have owed any tax, to be eligible for the benefit. For example, at the time OBRA was adopted in 1981, a couple with a child and with income totaling $3,000

would have had no tax liability. Still, even if no taxes had been withheld, the couple would have been eligible for an earned income credit of $298. In fact, "[m]ost of the people who receive [earned income credit benefits] have little or no tax liability; part or all of what they receive exceeds the amounts withheld from their earnings." In re Searles, 445 F.Supp. 749, 752 (D. Conn. 1978).

"[T]he earned income credit is in substance an item of social welfare legislation, intended to provide low-income families with 'the very means by which to live' . . . . "Ibid, at 753. It is available under 26 U.S.C. §43 to certain families with children and with earned income of less than $10,000 a year. What distinguishes the adults in families eligible for earned income credit benefits is that they are working

rather than receiving welfare. See S. Rep. No. 94-36, 94th Cong., 1st Sess. 11, reprinted in 1975 U.S. Code Cong. & Ad. News 54, 84.

Contrary to the petitioner's claim, the Second Circuit Court of Appeals' decision does not ignore the language of Congress or Congressional intent in enacting the intercept procedures. It was Congress which limited the Secretary of the Treasury to determining whether such amounts, "as refunds of Federal taxes paid" are payable to a state claiming a child support arrearage. 42 U.S.C. § 664(a).

Certainly the Court of Appeals' conclusion that the controlling reference should be the text of the relevant provision of OBRA rather than the general language of 26 U.S.C. §6401 is not clearly erroneous. Rather than being

clearly erroneous, the decision recognizes the various competing interests at work in the intercept procedures and in the earned income credit provision. The latter benefit is geared exclusively to lower income working families supporting children in their homes. 26 U.S.C. § 43(c)(1)(B). By contrast, the intercept program applies to reimbursement to the states for past welfare benefits. The Court of Appeals did not elevate one purpose over another. Rather it recognized that in the specific statutory scheme which was limited to refunds of "federal taxes paid," Congress had made this difficult choice which must be respected.

III. The Eleventh Amendment Is Not A Barrier to An Order Directing the Internal Revenue Service to Return Earned Income Credits Improperly Withheld

In response to petitioner's claims that the trial court's order violates the Eleventh Amendment, the simple answer is that the district court order was directed solely to the Internal Revenue Service and therefore the Eleventh Amend ment is inapplicable.[1] Petitioner's claim that the Internal Revenue Service might seek reimbursement from Connecticut is irrelevant to the case.

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[1] The petitioner must concede that the Eleventh Amendment is no barrier to injunctive relief against state officials requiring future conduct to comply with federal statutory and constitutional provisions. See Ex Parte Young, 209 U.S. 123 (1908). To the extent that petitioner questions the disposition of earned income credits, his challenge is limited to the year of 1981, since this was the only retroactive period in question.

In Bank of United States v. Planters Bank of Georgia, 22 U.S. 904 (1824) and President, Directors and Co. of Bank v. Wister, 27 U.S. 318 (1829), the Court recognized that even though an action may have an incidental effect on a state's interest, that does not transform it into an action against the state for purposes of the Eleventh Amendment. See also Quern v. Jordan, 440 U.S. 332, 348 (1979), a welfare benefit case where the Court rejected an Eleventh Amendment challenge to an order requiring a state agency to give notice of available administrative remedies, noting that "whether or not the class member will receive retroactive benefits rests entirely with the State, its agencies, courts and legislature, not with the federal court." Similarly, in the present case, whether the State is

eventually called upon to make reimbursement to the Internal Revenue Service is entirely a matter of its own separate contractual and statutory obligations. It is not the federal court which is called upon to make such an order.

IV. CONCLUSION

This case does not require this Court's review. Indeed the decision of the Court of Appeals is correct and proper and therefore the petition for writ of certiorori should be denied.

Respectfully submitted

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